Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-922

George E. Gould,
Petitioner,
v.
Patricia A. Gavett, as President of, Janet Kirshner, as 1st Vice President of, League of Women Voters of Montgomery County, Md., Inc.; Austin Heyman, as President of, Joan Elias, as 2nd Vice President of, Montgomery County Council of Parents Teachers Associations; Harriet Bernstein, as President of, Dr. Homer Elseroad, as Superintendent of, Robert Bourbon, as Attorney for, Montgomery County School Board; and James Henry Murdock, as President of, Marie M. Garber, as Elections Administrator for the Board of Supervisors of Elections for Montgomery County, Maryland,
Respondents.

OPPOSITION OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the court of appeals was not officially reported; it appears as Appendix A to petitioner's brief.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 1979. By order of this Court (per Burger, C.J.), petitioner's time for filing his petition was extended to December 12, 1979. The petition was filed on

December 12, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The statue involved here is Title 42 U.S.C. §1985(3):

> Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this

> section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against anyone or more of the conspirators.

QUESTION PRESENTED

Whether both courts below correctly found that the petitioner's numerous allegations of discrimination, deprivation of rights under color of state law, and slander were without merit.

STATEMENT OF THE CASE

Petitioner George E. Gould, instituted this suit, pro se, on October 30, 1974. He named nine defendants who were officers in four organizations. Patricia Gavett was named as president of the League of Women Voters of Montgomery County (LWV) and Janet Kirshner was named as vice president. Austin Heyman was named as president of the

Montgomery County Council of Parent Teacher Associations (MCCPTA) and Joan Elias as vice president. The third group of defendants named was Harriet Bernstein, president of the Montgomery County School Board (MCSB), Homer Elseroad, secretary, and Robert Bourbon, attorney. Finally, James Henry Murdock was named as president of the Board of Supervisors of Elections for Montgomery County (BSE) and Marie Garber as elections administrator. Gould sought three million dollars in damages from these defendants for violations of his civil rights and elective franchise; he characterized his claim as arising under Title 28 U.S.C. §1343, Title 42 U.S.C. §§1981, 1983, 1985 and 1988, with pendent claims for defamation, libel and slander.

Gould's complaint arises from his candidacy for the Montgomery County, Maryland, school board in 1974. Gould was defeated in the primary election held on September 10, 1974, but he continued his campaign as a write-in candidate until his defeat in the general election held on November 5, 1974.

At a pre-primary candidates' forum held on September 4, 1974, Gould stated that the League of Women Voters discriminated against him by failing to give him adequate space in its pre-primary Voter's Guide. Patricia Gavett publicly told him that he was "in error." Gould contends that this statement constituted defamation.

On October 7, 1974, after Gould was defeated in the primary election, the LWV and MCCPTA jointly sponsored a candidates' forum at a local public high school. The purpose of the forum was to provide an opportunity for successful primary candidates to speak. Despite his request, Gould was not permitted to address the audience.

Finally, on October 8, 1974, Gould attempted to speak at a meeting of the MCSB. He was not allowed to speak at that Board meeting.

From these facts, Gould contends that a conspiracy existed among the defendants to deprive him of his right to speak at the October 7th meeting. He sued the LWV and MCCPTA because they jointly sponsored the forum on that date. Because the MCSB was in

charge of all public school buildings, Gould contends that Bernstein, Elseroad and Bourbon should not have permitted the use of the high school for the forum because he was denied his rights at the meeting. Finally, he alleges that the BSE conspired to deny him his civil rights by advising the LWV that he was not a candidate for election. Gould maintains that the BSE knew he was a candidate and maliciously told the LWV otherwise. Gould based this claim on the fact that he received a letter on October 4, 1974, from the BSE which contained the words, "since your candidacy is continuing."

On May 29, 1975, Gould moved the district court, in what he termed a "subsidiary action," to declare unconstitutional certain public school laws of the State of Maryland and instructions promulgated by the Attorney General. He also sought a preliminary injunction to restrain the enforcement and execution of these statutes and instructions and requested a three-judge court to consider the issue. The district court denied the motion in an oral opinion on December 19, 1975.

On that same date the district court granted Gavett's motion for partial summary judgment as to the defamation allegation. The district court also granted the motion of Bourbon and Elseroad to dismiss the allegations against them. On May 7, 1976, the district court granted summary judgment motions for Garber, Murdock and Bernstein. Subsequent to these actions, but prior to the final disposition of his complaint, Gould appealed to the Court of Appeals for the Fourth Circuit. That court dismissed the appeal as premature in an unpublished opinion (No. 76-1801, Jan. 11, 1977). This Honorable Court denied Gould's petition for certiorari on May 2, 1977. The district court, on March 18, 1977, granted a summary judgment motion for Gavett and Kirshner. On March 25, 1977, the district court granted summary judgment for Heyman and Elias. All pending counterclaims were dismissed on April 27, 1977, thus disposing of this action before the district court.

Gould again appealed to the Fourth Circuit Court of Appeals on May 25, 1977. After submission of briefs by both sides, the

court granted the respondents' (appellees') motion for summary affirmance. The court rendered an unpublished per curiam opinion, dated February 6, 1979. Petitioner Gould seeks review of that decision in this Court.

ARGUMENT

The decision by the court of appeals, summarily affirming the district court's disposition of the case, was correct. Petitioner has demonstrated no basis for further review by this court.

I.

A Conflict in Decisions by the Courts of Appeals is Not Presented in this Case

The petitioner has alleged, in his Questions Presented (Petition, pp. 3 and 20), that there exists a conflict in the decisions of the Fourth Circuit and Sixth Circuit Courts of Appeal regarding what properly constitutes a class for purposes of Title 42 U.S.C. §1985(3). The petitioner correctly points out that the Fourth Circuit has not decided whether §1985(3) reaches beyond purely racially class-based discrimination, Rodgers v. Tolson, 582 F.2d 315, 317 (1978),

while the Sixth Circuit has extended §1985(3) to reach "clearly defined classes, such as supporters of a political candidate". Cameron v. Brock, 473 F.2d 608, 610 (1973).

Putting aside the question of whether or not the Fourth Circuit's failure to rule on this point sets up an actual conflict with the Sixth Circuit, it is quite clear that this particular action does not involve any such question of conflict between the circuit courts. It becomes apparent from a reading of the petition that Gould believes that he is a casualty of the Fouth Circuit's unwillingness to expand the definition of a §1985(3) class to the degree found in Cameron v. Brock, supra. (Petition, pp. 8-9). This, however, is not the case at all. The district court did in fact rely on the decision in Cameron v. Brock to hold that write-in candidates constitute a class for purposes of §1985(3), a fact plainly stated in the court of appeals' opinion. (Petitioner's Appendix at 7A). What the district court failed to find was any facts evidencing any invidious discrimination against Gould. (Id.) The court of appeals noted the district court's

reliance on Cameron v. Brock in stating that it was "affirm[ing] the judgment, if not the entire reasoning, of the district court." (Id.)

A reading of the court of appeals decision leaves no doubt that the Fourth Circuit's more restrictive interpretation of what constitutes a §1985(3) class was never applied in this case. It is therefore apparent that Gould would have no standing to object to any possible conflict between the circuits on that point. Gould had the full benefit of the liberal Sixth Circuit standard in the district court; he cannot be heard to object to the Fourth Circuit's previous decisions in the same area where those decisions affected his case not at all.

The purported conflict between the Fourth and Sixth Circuits is an issue unrelated to this case and is therefore a matter not properly considered in deciding whether or not to grant review on writ of certiorari. See Supreme Court Rule 19(1)(b).

II.

Petitioner Has Alleged No Special and Important Reasons Justifying Review on Writ Of Certiorari

The petitioner has presented no reasons for review which could be considered "special and important" under Supreme Court Rule 19. On the contrary, it appears from a reading of the petition that Gould seeks to have this Court reexamine the evidence or perhaps relitigate his claims entirely. That is certainly not the function of this Court, as the writ of certiorari will not be granted merely to review evidence or inferences drawn from it. General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 775, 82 L. Ed. 1273, 58 S. Ct. 849 (1938).

The petitioner's argument that he is entitled to a jury trial "to determine the facts behind respondent's answers to Petitioner's interrogatories, inquiring into the editorial processes of those responsible for the publication and public utterances" does not illustrate the need for further review. (Petition, pp. 3-4). The petitioner's

invoking of the Seventh Amendment right to jury trial fails to acknowledge the necessity of first withstanding the appropriate motions to dismiss and motions for summary judgment which may be made by the defendants in an action. The petitioner has not raised any arguments directly challenging the propriety of the court of appeals' affirmance of the granting of those motions in the district court; instead, the petitioner cites to this Court's decision in Herbert v. Lando, ___U.S.___, 99 S. Ct. 1635 (1979), a case totally inapposite to the instant action.

The petitioner's arguments do not meet the criteria of Rule 19, and no amount of citation to irrelevant cases and recitation of his previous arguments to the district court can serve to change that fact.

III.

The Writ of Certiorari Should Be Denied Under Rule 23(4)

The petitioner has failed to state with accuracy, brevity and clearness the facts and legal arguments essential for this Court's ready and adequate understanding of the points requiring consideration. Such

failure is sufficient reason for denying his petition. Supreme Court Rule 23(4).

CONCLUSION

For the reasons set forth above, the respondents herein submit that a writ of certiorari should not be granted in this case.

Respecfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the Opposition of Respondents to Petition for Writ of Certiorari was mailed, postage prepaid, this 11th day of January, 1980, to petitioner, George Gould, 13406 Arctic Avenue, Rockville, Maryland 20853.

/s/
John P. Diuguid